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**FILED**

**MAY 15 2002**

**NEW JERSEY BOARD OF  
CHIROPRACTIC EXAMINERS**

By: Anthony P. Kearns, III  
Deputy Attorney General  
Megan K. Matthews  
Deputy Attorney General

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
BOARD OF CHIROPRACTIC EXAMINERS

IN THE MATTER OF	:	
	:	Administrative Action
<b>PHILIP POTACCO, D.C.</b>	:	
License No. MC-1657	:	
	:	<b>CONSENT ORDER</b>
	:	
TO PRACTICE CHIROPRACTIC	:	
IN THE STATE OF NEW JERSEY	:	

This matter was opened to the New Jersey State Board of Chiropractic Examiners ("Board") upon the filing of an Administrative Complaint on November 21, 2000 by John J. Farmer, Jr., Attorney General of New Jersey, by Anthony P. Kearns, III, Deputy Attorney General. The Complaint alleged that Dr. Potacco has provided chiropractic treatment to in excess of 20 patients after his license was actively suspended effective December 1996.

Respondent's license to practice chiropractic was first suspended pursuant to a Final Order filed by the Medical Board, which regulated the practice of Chiropractic at that time, on January 8, 1985. This suspension arose from the conviction of the

Respondent for transporting stolen securities in interstate commerce, an offense involving the filing of false insurance forms for services which were never provided. Respondent's license was suspended beginning January 12, 1985 for five years with the first two years served as an active period of suspension and the remaining years stayed and served as a period of probation.

Respondent's most recent suspension commenced on December 1, 1996 pursuant to a Final Order filed by the Board on April 30, 1997. At that time, the Board found that Respondent had engaged in misrepresentation, professional misconduct and in record keeping violations. Specifically, the Board found that the Respondent provided excessive treatment to his patients, failed to keep adequate records, and failed to document advice to his patients. His license was actively suspended for a minimum of three years commencing on December 1, 1996, the first three years to be served as an active period of suspension and the remaining years to be stayed and served as a period of probation should the license be formally reinstated by the Board.

Respondent's license was never reinstated by the Board. Although Respondent was clearly aware of his suspension and the limitations on his license, he continued to practice chiropractic and held himself out to be a licensed chiropractor.

Respondent's conduct constitutes the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense in violation of N.J.S.A. 45:1-21 (b); a failure to

comply with the provision of any act or regulation administered by the Board in violation of N.J.S.A. 45:1-21(h); repeated acts of professional misconduct pursuant to N.J.S.A. 45:1-21(e); and violation of the duty to cooperate regulation pursuant to N.J.A.C. 13:45C-1.4.

The Board having determined that the within disposition is adequately protective of the public health, safety and welfare and Respondent being desirous of avoiding formal proceedings herein, and good cause therefore existing for the entry of this Order, it is

ON THIS 15<sup>th</sup> DAY OF May, 2002

HEREBY ORDERED AND AGREED THAT:

1. Respondent Philip Potacco, D.C. is hereby granted leave and agrees to voluntarily surrender his license to practice chiropractic in the State of New Jersey and shall not re-apply for a license to practice chiropractic in the State of New Jersey for a period of five (5) years from the date of this Order. Said surrender shall be deemed a revocation of license.

2. Respondent shall return his original license and current biennial registration by way of certified mail to: Kevin Earle, Executive Director, Board of Chiropractic Examiners, Post Office Box 45005, 124 Halsey St., Newark, New Jersey 07101.

3. Respondent shall cease and desist from the practice of chiropractic immediately.

4. Respondent shall pay costs in the amount of \$24,884.24 and civil penalties in the amount of \$20,000.00 to the State of New Jersey for a total of \$44,884.24 which shall be memorialized by a Certificate of Debt duly recorded in the State of New Jersey. Such costs and civil penalties shall be paid over five years at the Court Rule rate of 6% annual interest and paid by the respondent as follows. \$1,000.00 shall be paid contemporaneously with the entry of this Order. The balance of 43,884.24 shall be paid in 54 equal monthly installments of \$950.50 and shall be delivered to the Board no later than the fifth day of each month commencing with November 2002. Payment each month shall be submitted by certified check or money order, made payable to the State of New Jersey, and shall be sent to: Kevin Earle, Executive Director, Board of Chiropractic Examiners, Post Office Box 45005, 124 Halsey St., Newark, New Jersey. Respondent shall not be permitted to re-apply for a license to practice chiropractic in the State of New Jersey until and unless all costs and civil penalties have been paid in full.

5. Respondent shall be permitted to sell his practice at fair market value in accordance with the "Directives Applicable to Any Chiropractic Board Licensee who is Disciplined or Whose Surrender of Licensure has been Accepted" attached hereto.

6. Respondent shall comply with the "Directives Applicable to Any Chiropractic Board Licensee who is Disciplined or Whose Surrender of Licensure has been Accepted" which is attached hereto and made a part hereof.

7. The provisions of this Order shall remain in place until further Order of the Board.

NEW JERSEY STATE BOARD OF  
CHIROPRACTIC EXAMINERS

By: Brian Atkisson, D.C.  
Brian Atkisson, D.C.  
Board President

I have read and understand the within Consent Order and agree to be bound by its terms. Consent is hereby given to the Board to enter this Order.

Philip Potacco, D.C.  
Philip Potacco, D.C.

I hereby acknowledge that I have read and consent to the form of the Order above.

Thomas Ashley, Esq.  
Thomas Ashley, Esq.

**DIRECTIVES APPLICABLE TO ANY CHIROPRACTIC BOARD LICENSEE  
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE  
HAS BEEN ACCEPTED**

A practitioner who is the subject of a disciplinary order of the Board is required to provide the information required on the addendum to these Directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to a licensee who is the subject of an order which, while permitting continued practice, contains a probation of monitoring requirement.

**1. Document Return and Agency Notification**

The licensee shall promptly deliver to the Board office at P.O. Box 45005, 124 Halsey Street, 6th floor, Newark, New Jersey 07101, the original license and current biennial registration certificate. With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board.

**2. Practice Cessation**

The licensee shall cease and desist from engaging in the practice of chiropractic in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by the practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted.

**3. Practice Income Prohibitions/Divestiture of Equity Interest  
in Professional Service Corporations and Limited Liability Companies**

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44 shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, the licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

**4. Patient Records**

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

**5. Probation/Monitoring Conditions**

A disciplined practitioner whose active suspension of license has been stayed in full or in part, conditioned upon compliance with a probation or monitoring program, shall fully cooperate with the Board or its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual or facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by the rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and by providing the designated sample.

**NOTICE OF REPORTING PRACTICES OF**  
**BOARD OF CHIROPRACTIC EXAMINERS**  
**REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Chiropractic Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record thereof, including the transcript and documents marked in evidence, are available for public inspection upon request.

Pursuant to Public Law 101-191, the Health Insurance Portability and Accountability Act, the Board is obligated to report to the Healthcare Integrity and Protection Data Bank any adverse action relating to a chiropractor:

- (1) Which revokes or suspends (or otherwise restricts) a license; or
- (2) Which censures, reprimands or places on probation, or restricts the right to apply or renew a license; or
- (3) Under which a license is surrendered.

In accordance with an agreement with the Federation of Chiropractic Licensing Boards of the United States, a report of all disciplinary orders is provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order may appear on the public agenda for the monthly Board meeting and is forwarded to those members of the



public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.

### **INFORMATION TO BE PROVIDED TO THE BOARD**

Any licensee who is the subject of an order of the Board of Chiropractic Examiners suspending, revoking or otherwise conditioning the license, shall provide the following information at the time that the order is signed, if it is entered by consent, or immediately after service of a fully executed order entered after a hearing. The information required here is necessary for the Board to fulfill its reporting obligations:

Name \_\_\_\_\_<sup>rrrr1</sup>\_\_\_\_\_

List the name and address of any and all Health Care Facilities with which you are affiliated:

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List the names and addresses of any and all Health Maintenance Organizations with which you are affiliated:

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Provide the names and addresses of every person with whom you are associated in your professional practice: (You may attach a blank sheet of stationery bearing this information).

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rrrrr title A Section 61.7, the Board is required to obtain your Social Security Number and/or federal taxpayer identification number in order to discharge its responsibility to report adverse actions to the HIP Data Bank.